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As Liquidating Agent For Western Corporate Federal Credit Union

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

NATIONAL CREDIT UNION
ADMINISTRATION BOARD AS
LIQUIDATING AGENT FOR
WESTERN CORPORATE FEDERAL
CREDIT UNION,

Plaintiff,

v.

ROBERT A. SIRAVO, TODD M. LANE,
ROBERT J. BURRELL, THOMAS E.
SWEDBERG, TIMOTHY T. SIDLEY,
ROBERT H. HARVEY, JR., WILLIAM
CHENEY, GORDON DAMES, JAMES
P. JORDAN, TIMOTHY KRAMER,
ROBIN J. LENTZ, JOHN M. MERLO,
WARREN NAKAMURA, BRIAN
OSBERG, DAVID RHAMY and
SHARON UPDIKE,

Defendants.

Case No.: CV10-01597 GW (MANx)

**[PROPOSED] ORDER GRANTING
MOTION OF PLAINTIFF AND
COUNTERDEFENDANT
NATIONAL CREDIT UNION
ADMINISTRATION BOARD AS
LIQUIDATING AGENT FOR
WESTERN CORPORATE
FEDERAL CREDIT UNION TO
STRIKE AFFIRMATIVE
DEFENSES IN DEFENDANTS'
AMENDED ANSWERS**

Date: January 19, 2012
Time: 8:30 a.m.
Courtroom: 10

1 Good cause being shown, the Court hereby rules as follows on the motion of
2 plaintiff the National Credit Union Administration Board as Liquidator for Western
3 Corporate Federal Credit Union (the “NCUA”) to strike certain affirmative defenses
4 in the Amended Answers of defendants and counterclaimants Robert A. Siravo and
5 Thomas E. Swedberg [Docket 190], Timothy T. Sidley [Docket 191], Robert John
6 Burrell [Docket 192], and Todd M. Lane [Docket 193].

7 A. The Court strikes the following affirmative defenses in their
8 entirety, without leave to amend:

- 9 (1) Siravo and Swedberg’s First Affirmative Defense of
10 Ratification, Consent, Approval, Acquiescence, and
11 Participation by the NCUA, *see* Docket 190, ¶¶ 245-52;
- 12 (2) Lane’s Second Affirmative Defense of Consent, Approval,
13 Acquiescence, Ratification, & Participation by the NCUA,
14 *see* Docket 193, ¶¶ 246-47;
- 15 (3) Siravo and Swedberg’s Third Affirmative Defense of
16 Business Judgment Rule, Due Diligence and Reasonable
17 Investigation, *see* Docket 190, ¶¶ 267-68;
- 18 (4) Burrell’s Second Affirmative Defense of Business
19 Judgment Rule, Due Diligence, Reasonable Investigation,
20 Business Custom and Usage, Candor, Good Faith, *see*
21 Docket 192, ¶¶ 315-16;
- 22 (5) Lane’s First Affirmative Defense of Business Judgment
23 Rule, Due Diligence & Reasonable Investigation, *see*
24 Docket 193, ¶ 245; and
- 25 (6) Sidley’s Second Affirmative Defense of Business
26 Judgment Rule, *see* Docket 191, ¶¶ 246-58.

27 B. The Court hereby strikes the following affirmative defenses, but
28 only to the extent that they assert as affirmative defenses the

1 alleged approval, acquiescence, consent, participation or
2 ratification of NCUA examiners and supervisory personnel
3 before the NCUA placed WesCorp into conservatorship in
4 March 2009:

- 5 (1) Siravo and Swedberg's Sixth Affirmative Defense of
6 Reliance on Others (to the extent that it is based on
7 reliance on "NCUA personnel and examiners"), *see*
8 Docket 190, ¶¶ 275-76;
- 9 (2) Sidley's First Affirmative Defense of Consent, Approval,
10 Acquiescence, Participation, Ratification, *see* Docket 191,
11 ¶¶ 246-58;
- 12 (3) Siravo and Swedberg's Seventh Affirmative Defenses of
13 Apportionment (to the extent that it is based on the fault of
14 "NCUA personnel and examiners"), *see id.*, ¶¶ 277-78;
- 15 (4) Burrell's First Affirmative Defense of Consent, Approval,
16 Acquiescence, Authorization, Ratification (to the extent
17 that it is based on alleged consent, approval, acquiescence,
18 authorization, or ratification by the NCUA), including
19 paragraphs 254-69 in their entirety, *see* Docket 192, ¶¶
20 247-314;
- 21 (5) Lane's Sixth Affirmative Defense of Reliance on Others
22 (to the extent that it is based on reliance on "NCUA
23 personnel and examiners"), *see* Docket 193, ¶ 251;
- 24 (6) Lane's Seventh Affirmative Defense of Apportionment (to
25 the extent that it is based on the fault of "NCUA personnel
26 and examiners"), *see id.*, ¶ 252; and
- 27 (7) Sidley's Sixth Affirmative Defense of Reliance on
28 Professionals and Others (to the extent that it is based on

1 reliance on “NCUA personnel and examiners”), *see id.*, ¶¶
2 267-68.

3 The Court does not strike these affirmative defenses to the extent that
4 they assert approval, acquiescence, consent, participation or ratification
5 by the WesCorp Board of Directors (or committees of that Board), or
6 directives or guidance to the Officer Defendants made by the WesCorp
7 Board of Directors (or committees of that Board), or statements made
8 by the NCUA to the WesCorp Board of Directors (or committees of
9 that Board) that might have influenced any directives and guidance
10 given to the Officer Defendants by the WesCorp Board of Directors (or
11 committees of that Board), or reliance by the Officer Defendants on
12 people (such as professionals) other than NCUA personnel. By striking
13 these affirmative defenses, the Court does not preclude the Officer
14 Defendants from offering evidence of the NCUA’s statements and
15 conduct to the extent that such evidence is relevant to the issue of
16 whether the Officer Defendants breached their fiduciary duties, as
17 alleged by the NCUA.

18 C. The Court strikes the following affirmative defenses with leave to
19 amend:

- 20 (1) Siravo and Swedberg’s Fifth Affirmative Defense of
21 Statute of Limitations, *see* Docket 190, ¶¶ 273-74;
 - 22 (2) Burrell’s Seventh Affirmative Defense of Statute of
23 Limitations, *see* Docket 192, ¶¶ 327-28;
 - 24 (3) Lane’s Fifth Affirmative Defense of Statute of
25 Limitations, *see* Docket 193, ¶ 250; and
 - 26 (4) Sidley’s Twelfth Affirmative Defense of Statute of
27 Limitations, *see* Docket 191, ¶¶ 246-58.
- 28

1 D. The Court denies the NCUA's motion to strike as to:

2 (1) Sidley's Eleventh Affirmative Defense of Estoppel,
3 *see* Docket 191, ¶¶ 277-78.
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5 Dated: _____

6 The Honorable George H. Wu
7 United States District Judge
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